

These minutes were approved at the September 15, 2020 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, August 11, 2020 at 7:00 p.m.
Town Council Chambers, Town Hall
8 Newmarket Road, Durham, NH
MINUTES**

MEMBERS PRESENT: Chris Sterndale, Chair (attending remotely)
Tom Toye, Vice Chair (attending in person- served as Chair for the meeting)
Joan Lawson, Secretary (attending remotely)
Micah Warnock (attending remotely)
Mark Morong (attending remotely)

OTHERS PRESENT: Audrey Cline, Code Administrator (attending remotely)

I. Call to Order

Mr. Toye called the meeting to order at approximately 7:10 pm. He said he would serve as Chair for this evening in the Council Chambers, since Chair Chris Sterndale was at the meeting remotely, as were the other ZBA members.

He read the statement about the ZBA continuing to meet under the COVID-19 Emergency orders.

II. Roll Call

The roll call was taken.

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

III. Seating of Alternates

No alternates were seated.

IV. Approval of Agenda

Chair Toye said Item A had been continued to the September meeting. The Board agreed by roll call vote to continue the public hearing on this application to the September meeting.

Chris Sterndale *Yes*
Tom Toye *Yes*
Joan Lawson *Yes*
Micah Warnock *Yes*
Mark Morong *Yes*

Micah Warnock MOVED to approve the Agenda as amended. Chris Sterndale SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

Chris Sterndale *Yes*
Tom Toye *Yes*
Joan Lawson *Yes*
Micah Warnock *Yes*
Mark Morong *Yes*

V. Public Hearings:

- A. **CONTINUED PUBLIC HEARING** on a petition submitted by Kevin M. Baum, Hoefle, Phoenix, Gormley & Roberts PLLC, Portsmouth, New Hampshire, on behalf of Schoolhouse Technologies LLC, North Hampton, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from an April 20, 2020 letter of Building Inspector, Audrey Cline, limiting the occupancy of the residence to 6 unrelated occupants. The property involved is shown on Tax Map 5, Lot 4-7, is located at 21 Schoolhouse Lane, and is in the Courthouse Zoning District.

Continued to September meeting.

- B. **CONTINUED PUBLIC HEARING** on a petition submitted by Scott J. Winslow, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XXI, Section 175-111(C)(2)(c) of the Durham Zoning Ordinance to allow for the widening of the driveway, encroaching on the side setback. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the Residence A Zoning District.

Ms. Lawson noted that there was a site walk for this application this evening at 6:00 p.m. at the property.

Mr. Winslow said he'd sent a letter out concerning the application, and had updated his original PowerPoint presentation. He said he'd like to go through the presentation so they would all be on the same page.

Chair Toye noted that there had been discussion about this application at the last meeting, and a site walk. He opened the Public Hearing, and asked if any members of the public would like to speak this evening.

Noelle Khleif, 11 Garden Lane said she had no problem with the widening of the driveway. She said the Winslows, a firefighter and a nurse, were essential workers, and said every minute was valuable for them and so they needed extra space in their driveway if there was an emergency. She said there were a lot of driveways in the neighborhood that were widened and blacktopped. She said they were wonderful people in that neighborhood.

Mr. Winslow said there were no objectors to the driveway and said several neighbors had signed testimony saying they supported it. He said the site visit pointed out other alternatives from what he'd requested, but said they would create a hardship. He also said they would change the aesthetic of the neighborhood. He said he and his wife were on call for emergency response and said a flat level space that was paved professionally as proposed was the safest and most practical option. He spoke in some detail on this.

Ms. Lawson asked if agenda Item C, the Special Exception application should have been read in as well, since the applications clearly went together. There was discussion and then agreement about considering both of the Winslow applications together.

- C. **CONTINUED PUBLIC HEARING** on a petition submitted by Scott J. Winslow, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTIONS** from Article XXI, Sections 175- 111(B)(2) & 175-111(C)(2)(b) of the Durham Zoning Ordinance to allow for the widening of the driveway and the parking of more than three vehicles in the front setback with one parking space encroaching on the side setback. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the Residence A Zoning District.

Chair Toye said this application brought into the discussion the number of vehicles that would be on the site. He asked if there was a specific number the Winslows would want.

Mr. Winslow said he'd like to be able to have 5 vehicles out front, including scooters. He said this was for the 4 residents of the house, the accessory apartment, and potential visitors. He said he'd like an approval that covered this for 5 cars parking there on a regular basis. He said the request made sense and spoke further on this.

Mr. Sterndale noted that there was information provided by the DPW today, and asked to hear from Ms. Cline on this.

Ms. Cline said the DPW returned the driveway application, and had denied the widening of the driveway. She explained that the decision wasn't appealable to the ZBA, and was based on DPW regulations. She used the analogy of a situation where someone wanted a variance to build a porch that was in the Town right of way, and considered whether the ZBA would have the authority to grant that. She said she didn't think so, and said the

driveway was the same situation. But she said if Mr. Winslow didn't believe that was true, he could ask for a rehearing.

Ms. Cline said the parking ordinance that was recently passed was overwhelmingly supported by citizens, concerning restricting more widening of driveways. She also said variances weren't supposed to be related to an individual and were for the life of the property, whoever lived there. She also said the building file had multiple violation notices for parking in that area, including notices from her predecessor.

Mr. Sterndale said the ordinance governing driveway permits was not part of the Zoning Ordinance. Ms. Cline said there was mention in the Ordinance of the DPW regulation that said driveways should not be wider than 12 ft unless approved by the DPW. She said the DPW would have control over how the driveway was constructed, the need to address additional storm drainage, etc., which was all separate from Zoning. Mr. Sterndale said the authority to regulate the right of way was granted to the Town, which was not enforced through the Zoning Ordinance. Ms. Cline said that was her understanding, and said she'd asked the Town Attorney to clarify this. Mr. Sterndale said even if this was approved by the ZBA, there were obstacles the Board couldn't get involved with.

Mr. Winslow said he went through the process and was denied verbally. He said he met with the DPW, requested the steps to widen the driveway, and they said it was through the ZBA. He said the application outlined all the steps, and he spoke in further detail on this and noted the communications concerning this. He said the DPW told him to go to the ZBA, and said he was confused. He said he'd hoped the DPW could be at this meeting so there could be an answer on all of this.

Chair Toye said it seemed the Board could vote this evening, which would be subject to DPW oversight after that.

Mr. Morong said he had a problem with that. He said just because the DPW might have told Mr. Winslow this was the procedure, that didn't mean they were right. He said he'd like to hear what the Town Attorney's take was on this before voting on this. He said he needed to find out whether the Board was authorized to do this or not.

Mr. Sterndale said the ZBA could make a decision on the variance criteria, which were pretty clear, knowing there were other open questions. He said they might end up rehearing it. Chair Toye and Mr. Warnock agreed.

Mr. Morong said if it wasn't a Zoning Ordinance issue, a question was how the ZBA could make a judgment on it. There was discussion. Chair Toye said he now understood the language in section 175-111 C(2)c. Ms. Cline said deniability by the DPW would make that language a moot point, and said it would only make sense if there was an approved driveway cut in hand and the ZBA was giving a variance to allow that to happen. There was further discussion. Mr. Morong said the ZBA still might have issues, even if the driveway permit was approved. He spoke further.

Mr. Winslow asked why those steps hadn't happened. He said he was confused about the process and the correlation between the 2 entities. Mr. Morong said he was confused about the process too.

Ms. Cline said at the last meeting, the ZBA said it wanted to hear back from the DPW regarding the driveway permit approval. She said in recent emails, she made it clear that she didn't believe the ZBA had the authority to give a variance to a DPW decision. She said their written decision now denied the driveway. She said if it had been approved, a variance could be looked at, but said she didn't think it worked the other way.

Mr. Winslow explained the process he'd gone through. He said he was following it to the best of his ability.

Ms. Cline said she apologized for the process regarding the driveway permitting not being followed up on quickly. She spoke further on this. There was discussion with Mr. Winslow. He said hopefully this could be finalized rather than putting it off for another month.

Mr. Sterndale said he didn't see a need to delay. He said if a variance was granted and the DPW hadn't permitted the driveway, there was an appeal process. He said if they denied it, there was an appeal process as well. He said he'd like to hear from Board members about the site walk.

Joan Lawson MOVED to close the Public Hearing, Micah Warnock SECONDED the motion and it PASSED unanimously by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Ms. Lawson said the request was an application for variance from 175-111 C(2) c, and said there wasn't any request for a variance from 175-111 C(2) a, which said: "For all uses, within the Town right of way the driveway may not exceed 12 feet in width (excluding turning radii) unless approved by the Durham Public Works Department."

She said at the site walk, they discussed why the driveway for their additional vehicles couldn't be the third spot up near the garage where the fence currently was, which was in the side setback. She asked if they could approve the expansion of the driveway up to the point of the Town right of way.

There was discussion. Chair Toye said he agreed with Mr. Sterndale and would like to move the conversation along toward having a vote. Ms. Lawson asked whether if they were talking about 175-111 C(2)c, they were talking about the whole length of the driveway, and said if they were, that was contrary to C(2)a. Chair Toye said the variance

was being requested from 111C(2)c. Ms. Lawson read this provision. "There is no required setback for a single-lane driveway. A driveway that is wider than a single lane shall be set back a minimum of 10 feet from side lot lines and in accordance with the rear setback for the zoning district from rear lot lines."

Chair Toye said it had to do with the setback and didn't say anything about the width of the driveway. He said he would be in favor of putting a maximum on that. He suggested a typical space was 9 ft wide, and said a maximum width of 27 ft for 3 cars would be reasonable, and would put them inside of the 10 ft.

Ms. Lawson asked if there was a plan that showed the exact measurements, and there was discussion that a rough plan was submitted to the DPW. Mr. Morong said the line was staked tonight, which was said to be at least 10 ft from the lot line. Chair Toye said there was no survey of the property, so the lot line was probably a guess.

Mr. Sterndale said this was a variance request and said he didn't see a hardship on the property. He said there were 4 parking spaces and there were also 1-2 garage spaces on a small lot. He said he couldn't support a variance on that criterion.

Ms. Lawson said she agreed, having seen the site. She said whether it was within 10 ft of the lot line was not pertinent. She said at the site walk, they saw alternative locations on the right side of the driveway for parking for additional cars, which would involve moving a fence, trash cans, etc. She said she couldn't support that there was a hardship.

Mr. Warnock said based on the line shown at the site walk, if needed, a ft or two more could be grabbed on the other side of the driveway without a variance. He said he agreed that there was no hardship and that the applicants could accomplish what they wanted without a variance.

Chair Toye said the applicant felt the ordinance was a hardship for them, and it was for the Board to determine if it was unnecessary.

Mr. Morong said he would abstain from voting, and said he had a problem with the permitting process. He said it seemed like a messed-up procedure. He also said he questioned if the variance was necessary, in regard to the lot line location.

Chair Toye said the ZBA had to answer affirmatively on all five criteria. He asked if there were any thoughts on the other variance criteria. There were no further comments from Board members

Micah Warnock MOVED to deny petition submitted by Scott J. Winslow, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XXI, Section 175-111(C)(2)(c) of the Durham Zoning Ordinance to allow for the widening of the driveway, encroaching in the side setback, for failing to meet the hardship criteria. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the

Residence A Zoning District. Chris Sterndale SECONDED the motion and it PASSED 3-1-1 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>No</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>abstained</i>

Chair Toye said the Special Exception had to do with the number of cars being parked, and said 3 were allowed and 5 were requested. He noted that the criteria for a Special Exception were different than those for a variance. He read these criteria, outlined in section 175-26.

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious or noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. Zoning Districts (See Table of Contents) of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, excessive noise, or comparable adverse causes, impacts, or conditions.

Mr. Sterndale noted that the 175-111B2 special exception criteria also applied: There was discussion that both the generic criteria in 175-26 and the more specific criteria in 175-111(B)2 applied.

Ms. Lawson said the agenda spoke about 111(B)2 and also spoke about 111C(2)b, which didn't have to do with the number of vehicles and was about the driveway being a single lane. She said they therefore weren't talking just about the number of cars, and were also talking about the driveway width.

Chair Toye said it was written that way, but said the Ordinance didn't allow the Board to grant relief based on 111C(2)b. Ms. Lawson said she wanted to make sure the Board was clear on that. Mr. Sterndale agreed that they were going to ignore 111C(2)b, and said he wanted to make sure they were all clear on that. Ms. Cline provided details on this.

Ms. Lawson read the Special Exception criteria for 111B(2)b:

- a) a finding that it is not practical to restrict parking to the areas and setbacks specified.
- b) a finding that allowing the parking to be situated as proposed will not have an adverse impact upon abutting properties nor upon the character of the streetscape; and
- c) a finding that the proposed parking spaces will serve on-site dwelling units only.

Chair Toye said he didn't have concerns about the global Special Exception criteria under 175-26, and said he thought they could be met without too much discussion. He said the discussion could focus on 111(B)2. He said he would be comfortable increasing

the number of allowed vehicles from 3 to 4, which was clearly doable within the driveway. He said he didn't think they could say widening the driveway was appropriate under these criteria, and said it was quite practical to restrict parking to the areas specified. He said it wasn't reasonable to limit this property to 3 cars when the driveway could comfortably fit 4.

Chair Toye asked whether if the Board approved the Special Exception for 4 vehicles and not 5, and relief was then granted to widen the driveway and they came back with a request for 5, the decision today would limit their ability to come back with that request.

Mr. Sterndale said he wouldn't think so, since the facts would have changed. Ms. Cline said she didn't think the Special Exception was restricted to one application, and thought others for the similar purpose could be proposed.

Chair Toye said he agreed with Mr. Sterndale's assessment. He said it would be a benefit to the applicant to create a scenario where the existing number of vehicles wasn't in violation of the ordinance.

Mr. Morong asked if it would be possible for Mr. Winslow to create another parking space closer to the garage as long as the entrance was what it was now, or if he had to park on the pavement that was there now. There was discussion about whether this would be possible as long as it wasn't within the side setback.

Ms. Cline said yes, if it didn't encroach within 10 ft of the side setback and a building permit was approved for that. She said any number of cars could be parked beyond the 30 ft as long as they served the house. She said also said if that space was within 30 ft, a Special Exception would be needed for another vehicle.

Mr. Morong said he thought the Board could grant that tonight even if it was within the side setback, as long as it wasn't in the right of way. Ms. Cline said Mr. Winslow didn't apply for that but said the Board could approve that.

There was further discussion. Chair Toye said he wasn't comfortable with a motion for something other than what had been asked for and noticed. There was further discussion about the provisions involved under 175-111. Mr. Sterndale said he'd specifically discussed relief from 111-B(1) a, "Front setback. Up to 3 vehicles per household are permitted in the front setback area." It was noted that the application spoke about encroaching on the side setback. Mr. Sterndale noted that he'd said he was comfortable with increasing the number of vehicles, but not the rest of the request. Ms. Lawson said she would be ok with approving that.

Mr. Morong asked if the motion would say it couldn't encroach on the side setback. Mr. Sterndale said he didn't know if he wanted to close the door on that for the applicant in the future. He said right now he'd preclude including in the approval encroaching on the setback. Ms. Lawson confirmed that Mr. Sterndale could approve 111B(1)a, but only that, and said she could approve that as well.

Mr. Morong said he could approve that, and could also go with encouraging another parking space on the side setback, so the Winslows could get in and out easier. Ms. Lawson said that hadn't been requested. Mr. Morong said he thought the applicant was requesting that in the Special Exception application language. Chair Toye asked Mr. Sterndale if he was comfortable with that approach. There was further discussion.

Ms. Cline said it was suggested that this parking space be applied for, which didn't also require a curb cut, but Mr. Winslow rejected that. She said it could be applied for if he thought it was reasonable to do that. She said it wasn't noticed that way because he said he didn't want to do that.

Mr. Morong said he could read the Special Exception application to say it was about allowing more vehicles, widening the parking area, and encroaching on the front and side setback. Mr. Sterndale agreed it could be read that way, but said he wasn't willing to grant the full amount that was requested. But he said it seemed onerous to not grant some relief to allow the parking of 4 vehicles in the driveway.

Mark Morong MOVED to approve an application for Special Exception from Article XXI, Sections 175- 111(B)(2) & 175-111(C)(2)(b) of the Durham Zoning Ordinance to allow for the widening of the driveway and parking for more than 3 vehicles, limited to 4 vehicles in the front setback, with one parking space encroaching on the side setback. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the Residence A Zoning District.

Chair Toye said they'd discussed that 111C(2)b wasn't applicable to the Special Exception. Mr. Morong said he'd revise the motion to reflect this.

Mark Morong MOVED to approve an application for Special Exception from Article XXI, Sections 175- 111(B)(2) of the Durham Zoning Ordinance to allow for the widening of the driveway and parking for more than 3 vehicles, limited to 4 vehicles in the front setback, with one parking space encroaching on the side setback. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the Residence A Zoning District. Tom Toye SECONDED the motion.

Mr. Sterndale said the motion was too broad and said he couldn't support it. He said there was a way to get to widening, but said they were shooting from the hip in granting an open-ended Special Exception without a more detailed plan, which put Ms. Cline in a tough spot. Ms. Lawson agreed.

Mr. Warnock asked if the motion could be restricted to not allow the pavement to exceed 27 ft. Chair Toye said no.

The motion FAILED unanimously by a roll call vote:

<i>Chris Sterndale</i>	<i>No</i>
<i>Tom Toye</i>	<i>No</i>
<i>Joan Lawson</i>	<i>No</i>
<i>Micah Warnock</i>	<i>No</i>

Mark Morong **No**

Chris Sterndale *MOVED to approve a petition submitted by Scott J. Winslow, Durham, New Hampshire for an APPLICATION FOR SPECIAL EXCEPTION from Article XXI, Sections 175-111(B)(1)(a) pursuant to B(2) of the Durham Zoning Ordinance to allow parking of up to four vehicles in the front setback. Joan Lawson* **SECONDED the motion.**

Chair Toye said he liked the motion and said it accomplished a significant part of the objective. He said his only concern was that they were reaching outside of the specific provision that relief was requested from. But he said it was a way to grant some relief to the applicant, and said he supported it.

The motion PASSED unanimously by a roll call vote:

Chris Sterndale	Yes
Tom Toye	Yes
Joan Lawson	Yes
Micah Warnock	Yes
Mark Morong	Yes

- D. **PUBLIC HEARING** on a petition submitted by Iago & Erin Hale, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XXII.1, Section 175-153 of the Durham Zoning Ordinance to change the use of an existing outbuilding to an accessory apartment. The property involved is shown on Tax Map 6, Lot 1-4, is located at 74 Mill Road, and is in the Residence B Zoning District.

Mr. Hale said they had an outbuilding they would like to rebuild and make into an accessory apartment for his mother. He said they wouldn't change the footprint or elevations, and said it was a change of use that was proposed for this accessory structure.

He went through the variance criteria and how they were met with the application. He said granting the variance wasn't contrary to the public interest. He said they would preserve the essential character of the property, and noted that the outbuilding was sited near the old Chesley Mill and contributed greatly to the historical feel of the area. He said only through the change of use could they save the building. He said it would be built on the same footprint, and said it would preserve the overall look of the property.

Mr. Hale said granting the variance was in the spirit of the ordinance, which was mainly about not wanting buildings to pop up on relatively small lots, which could impact abutters. He said their property was unique, so the argument didn't hold. He said the building already existed in that location, and also said they had no immediate residential abutters and the layout wasn't like more modern lots. He said their only immediate abutter was UNH and a forest lot that was unmanaged. He said across the river was one residential abutter and also said Town property abutted them.

He said substantial justice would be done in granting the variance. He said the structure already existed, and said what was proposed was no harm to the public. He said the introduction of another resident on the property potentially harmed the public good, but said having one more resident could happen with an attached accessory apartment.

He said granting the variance wouldn't diminish the value of surrounding properties.

Mr. Hale said that regarding the hardship criterion, the point of the project was an aging in place apartment for his mother. He said they needed to consider the issue of access, with a ground level apartment, and said that drove the project. He said it also needed to be near the driveway to facilitate moving from cars, etc. to the building. He said they therefore did consider the project to be constrained to the driveway end of the property on the eastern end.

He said literal enforcement of the ordinance, which meant building an attached accessory unit would be a hardship. He noted that the entire addition to the house in 1983 was within the shoreland setback, and said an attached unit would require significant site disturbance within the shoreland buffer and a variance would be needed. He said the disturbance would be quite substantial given the downhill slope, and the need to provide a ground level entrance.

He said using the existing footprint, and shoring up the existing foundation, they could avoid unnecessary disturbance in the buffer. He said the outbuilding sat at ground level, minimizing the need for additional excavation. He also said the footprint would already be disturbed because the current building would need to be demolished. He said building an attached dwelling unit would double the amount of disturbance.

Mr. Hale said having an attached dwelling unit would mean a loss of value of the house and property due to the loss of the outbuilding in its current location, and impacts from construction. He noted that the outbuilding was an effective visual and noise barrier and provided a protected recreation spot on the river. He said removing it to put the footprint someplace else on the property would result in a detrimental level of exposure to Mill Road. He said it was also a visual barrier between the living space and Mill Road.

He said the building also provided highly accessible storage, and he provided details on this. He said major excavation work would be needed in the other location with an attached structure in order to have a storage area, and said that would be an unnecessary hardship. He said they would also lose something in attaching the structure to their existing house. He said it would cut out a great deal of light and would compromise the view of the river, which was the selling point of the house.

He said they were also very concerned about attaching anything to that end of the house because of possible harm to a beautiful maple tree. He also said they already had an elongated structure, and said attaching yet another unit would be a loss in terms of the aesthetic value of the property.

Mr. Hale said for these reasons, literal enforcement of the ordinance would be an unnecessary hardship, with no obvious benefit to the public. He noted that they had some bad stormwater and erosion issues on the property because of runoff from Foss Farm, and said this had eroded the foundation of the outbuilding. He said the project was an opportunity to address these issues.

He said they'd enlisted Ross Engineering to address the septic issue, and said the plan was to update the septic system for the whole property. He said the current 30-year-old system was designed for 4 bedrooms, and said it would be replaced by a Clean Solutions system with increased capacity to handle the accessory apartment. He said the footprint for the septic system would be reduced, and said there would be substantially cleaner effluent. He also noted that with this system the leachfield would be further away from the stream and the hydric B soils.

Chair Toye opened the Public Hearing, and asked if there were any members of the public who wished to speak in favor or in opposition to the application. There was no response.

Chair Toye said the application addressed the criteria very well.

Ms. Lawson said she had no questions. Mr. Morong said it was very good application.

Micah Warnock MOVED to close the Public Hearing. Joan Lawson SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Chair Toye said he'd always found this to be an interesting property. He said the barn added a lot of architectural and historic interest to the property and said he was excited to see a proposal that preserved this. He said that regarding the hardship criterion, the uniqueness of the property was clear, considering other properties in the neighborhood, UNH property and the river nearby.

He asked if anyone would like to speak to the other criteria. Board members agreed that granting the variance would not be contrary to the public interest. They also said the spirit of the ordinance was observed in granting the variance and that substantial justice would be done in granting the variance. They said the value of surrounding properties would not be diminished as a result of granting the variance. They said literal enforcement would be an unnecessary hardship to the property owner.

Micah Warnock MOVED to approve an application submitted by Iago & Erin Hale, Durham, New Hampshire for a VARIANCE from Article XXII.1, Section 175-153 of

the Durham Zoning Ordinance to change the use of an existing outbuilding to an accessory apartment, and to reference Appendix C, elevations and floor plans; the replacement structure will be substantially in the same location as the existing structure. The property involved is shown on Tax Map 6, Lot 1-4, is located at 74 Mill Road, and is in the Residence B Zoning District.

Chair reopened the hearing.

Mr. Hale said it would be the same footprint and height, but said he hadn't finalized the floorplan with the architect yet.

Chair Toye closed the Public Hearing. He said he didn't have concerns about the interior of the building as long as the building code and the Zoning provisions related to accessory apartments were met.

Ms. Cline asked if the Board was comfortable with what was proposed from an architectural standpoint. Chair Toye said he was satisfied with just addressing the footprint and elevations. Others Board members agreed. There was discussion about whether elevations included window placement.

The motion was restated:

Micah Warnock MOVED to approve a petition submitted by Iago & Erin Hale, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XXII.1, Section 175-153 of the Durham Zoning Ordinance to change the use of an existing outbuilding to an accessory apartment with reference to the provided Appendix C, elevations and floor plans. The replacement structure shall maintain the approximate location and massing as the existing structure. The property involved is shown on Tax Map 6, Lot 1-4, is located at 74 Mill Road, and is in the Residence B Zoning District. Joan Lawson SECONDED the motion and it PASSED unanimously by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

- E. **PUBLIC HEARING** on a petition submitted by David Hills, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XXIII, Section 175-126(A) of the Durham Zoning Ordinance to create signage in excess of 48 square feet in size for a commercial property. The property involved is shown on Tax Map 11, Lot 22-3, is located at 147 Piscataqua Road, and is in the Residence C Zoning District.

Mr. Hills said the current sign had been there for about 25 years. He said it was realized that with the increased traffic and speed there, the sign hadn't been as effective as it might be. He said they came up with a sign that was simpler and would be more visible, and therefore would allow people to see the entrance and pull in more easily and safely.

He went through the variance criteria and how they were met with the application. He said granting the variance would not be contrary to the public interest because it would strengthen the economic viability of the Emery Farm Market and Cafe, would support the Town's goal of supporting agriculture, would support a scenic vista in a Town entryway, and would allow drivers to anticipate traffic behavior sooner than they currently did.

He said the spirit of the ordinance would be observed in granting the variance because the new signage would be in the location of the existing sign. He said the signage would be tasteful and would be lit at night with downlighting, as was currently the case.

He said substantial justice would be done in granting the variance. He said this stretch of roadway had seen a dramatic increase in traffic over the years, coupled with speed in excess of the posted 45 mph limit. He said with the new signage, the chance of an accident might be reduced, and people might feel safer pulling into the stand.

Mr. Hills said the value of surrounding properties would not be diminished in granting the variance. He said there were no properties that were able to see the entry signs.

He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the current zoning increased the possibility that drivers would either slow abruptly, or if heading eastbound would be afraid to pull into the stand. He said this therefore did not enable this agriculturally based business to thrive as it might with signage that was appropriate to the speed and traffic volume of the road. He said appropriately sized signage would enable the public to see the entrance to the farm well in advance, and would allow them to safely and easily enter the parking area.

Chair Toye asked if there were any questions.

Ms. Lawson said the sign looked like it was faced so westbound drivers could see it. Mr. Hills said the current sign was perpendicular to Route 4 and said the new sign would be a V with the apex facing Route 4, so people from both directions would be able to see it for a longer period of time as they came down the road.

Ms. Lawson asked about the calculation of the total square footage, and asked if there would be 104 sf on each side.

Ms. Cline said someone only saw one side at a time because of the angle, and said straight on, one wouldn't be seeing more than that. She said that was counted as 104 sf. She said if both sides could be seen at once, she would perhaps make a judgment that it was double the size.

Ms. Cline asked about possible child signs that provided information on what was in season, etc. Mr. Hills said they would try to get away from that, which would make things simpler. Ms. Cline suggested that the Board restrict hanging child signs, but said

she thought some temporary signs would still be allowed to be used, for things like pick your own blueberries. There was further discussion.

Chair Toye asked how much lineal road frontage there was. Mr. Hills said it was over 1000 sf. He noted that there was a curve in the road and people saw the sign suddenly. He said people were nervous about making a left turn into the property, heading east. He said they needed to make it easier for people to see the sign.

Chair Toye said he agreed with the approach to the sign given this location, the sight lines on both sides and the amount of road frontage. He said the Board tried not to grant more relief than was necessary but said in this case the number was right. Mr. Morong said it was proportional to the size of the land. Chair Toye said it was appropriate for the setting.

Mr. Hills noted that they just finished installing an EV charging station on the property, and said information on this would be included within the proposed square footage of the sign.

There was discussion about approving the square footage of the sign, but not the content.

Chair Toye asked if any members of the public wished to speak in favor of or against the application. There was no response.

Micah Warnock MOVED to Close the Public Hearing. Joan Lawson SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Ms. Lawson said granting the variance would not be contrary to the public interest. She said the applicant had made it clear that the signage was beneficial because of the farm and what they offered. She said the spirit of the ordinance would be observed, in that the sign would be well done and lit, and would not be so large that it wasn't proportional to the frontage. She said substantial justice would be done in granting the variance, and said it would help with traffic flow, for people who were interested in visiting the wonderful farm stand. She said property values would not be diminished in granting the variance. She said literal enforcement of the provisions would be an unnecessary hardship because of how the business was situated on the road. She said people needed to have the opportunity to know what was coming and pull into the farm stand in a timely manner.

Joan Lawson MOVED to approve an application submitted by David Hills, Durham, New Hampshire for a Variance from Article XXIII, Section 175-126(A) of the Durham Zoning Ordinance to create signage in excess of 48 sf to a maximum of 104

sf. The property involved is shown on Tax Map 11, Lot 22-3, is located at 147 Piscataqua Road, and is in the Residence C Zoning District. Mark SECONDED the motion.

Chair Toye spoke about also possibly approving the style of the sign. Ms. Lawson asked about restricting the width and height to a certain size. Ms. Cline asked about approving the signage plan. Mr. Sterndale said he was comfortable with limiting it to the dimensions as submitted. Ms. Cline suggested that the approval could allow a small percentage of change in the dimensions of the signage to provide some leeway. Mr. Warnock said he was good with plus or minus 10%, and no child signs attached.

Mr. Morong said he'd be more comfortable if the application was approved according to the design proposed. He said he thought a totally new sign would need to come back to the ZBA, said they liked this sign but might not like another one.

After discussion the motion was restated by Ms. Lawson:

Joan Lawson MOVED to approve a petition submitted by David Hills, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XXIII, Section 175-126(A) of the Durham Zoning Ordinance to create signage not to exceed a maximum of 104 square feet as per the detailed view from Winterholben dated 7/31/20, with each of the two signs not to exceed a variation of 10 % of the presented dimensions. No child signs will be permitted. Tom Toye SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

VI. Other Business

There was discussion that the next ZBA meeting was scheduled for September 15th, because September 8th was the day of the Primary.

VII. Approval of Minutes:

June 9, 2020

The roll call votes for the motions should say Tom "Toye"

Page 1, line 30 should say "No alternates were seated."

Page 7, the motion at the bottom of the page should read as follows:

Chair Sterndale SECONDED the motion and it PASSED 4-1 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toy</i>	<i>Yes</i>

Joan Lawson *Yes*
Micah Warnock *No*
Mark Morong *Yes*

Page 16, motion should read:

Joan Lawson SECONDED the motion and it PASSED 4-0-1, with Tom Toye abstaining.

Chris Sterndale *Yes*
Tom Toye *abstained*
Joan Lawson *Yes*
Micah Warnock *Yes*
Mark Morong *Yes*

Tom MOVED to approve the June 9, 2020 Minutes as amended. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

Chris Sterndale* *Yes
Tom Toye* *Yes
Joan Lawson* *Yes
Micah Warnock* *Yes
Mark Morong* *Yes

VIII. Adjournment

Micah Warnock MOVED to adjourn the meeting. Joan Lawson SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

Chris Sterndale* *Yes
Tom Toye* *Yes
Joan Lawson* *Yes
Micah Warnock* *Yes
Mark Morong* *Yes

Adjournment at 9:39 pm

Victoria Parmele, Minutes taker

Joan Lawson, Secretary